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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION
CRIMINAL WRIT PETITION NO.2561 OF 2004

Jaiprakash Srivastava & anr .. Petitioners

vs

Promila Rajendra Kapoor & anr.. Respondents

Mr.A.P.Mundargi,Sr.Counsel i.b M/s M.V.Kini & Co for Petitioners
Ms.Promila Rajendra Kapoor,Respondent in person
Mr.D.P.Adsule, APP for Respondent no.2.

CORAM : B.H.MARLAPALLE, J

DATED : 11th July, 2007

P.C.

1. Heard Mr.Mundargi learned Senior counsel for the petitioners. The complainant Ms.Promila Kapoor appears as party in person. Perused her written submissions placed before me.

2. The complainant has filed Criminal Case No.484/S of 1998 for an offence under section 138 of the Negotiable Instruments Act against the company namely M/s Indo French Biotech Enterprises Ltd having its registered office at 5, Bhaskar Mansion, 31, Sitladevi Temple Road, Mahim, Mumbai-16. All the directors of the said company have been impleaded as accused nos. 1 to 8 to the said complaint. The present petitioners are accused nos. 5 and 6 and they contend that they

are the nominee directors representing the public sector undertaking MMTC (The Mineral and Metal Trading Corporation of India Limited. Undoubtedly, MMTC Ltd has equity participation to the extent of Rs.4.75 crores and therefore it had nominated the present petitioners as directors on the board of M/s Indo French Biotech Enterprises Ltd. The petitioners further state that they being the nominee directors were not involved in the day to day management of M/s Indo French Biotech Enterprises Ltd and hence they cannot be held vicariously liable for the offence namely dishonour of cheque issued by the said company in favour of the complainant. On that count, they prayed that the order of issuance of process passed by the learned Magistrate is illegal and the proceedings are required to be quashed to the extent they are concerned.

3. In the normal course, this Court would have directed the petitioners to approach the Sessions Court as has been the consistent view of this Court to challenge the order of process by filing Criminal Application under section 397 of Cr.P.C. However, the Writ Petition has been pending for last 3 years. There is inordinate delay caused in the trial of the complaint and the complainant is anxious to ensure that the Criminal Application is decided at the earliest possible.

4. Second proviso to section 141 of the Negotiable Instruments Act, 1881 reads as under :

> " Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter. "

5. In addition, the complaint does not specifically set out the role played by the present petitioners in the day to day management of Indo-French Biotech Enterprises Ltd though it states that the accused no.1 V.Gopal is the President/Chairman of the said company. It appears that accused nos. 2,3 and 4 and 5 are whole time directors/employees of accused no.7 company and as has been held by the Supreme Court in AIR 2007 SUPREME COURT 1650 (Everest Advertising Pvt.Ltd vs. State Govt. of NCT of Delhi & ors), the vicarious liability on account of dishonour of cheque will be fastened on these accused and not the petitioners as the petitioners being the nominee directors cannot be said to be engaged in the day to day activities of accused no. 7 company.

6. The petition therefore succeeds. The same is hereby allowed in terms of prayer clause (b). Criminal Case No.484/S/1998 shall continue against all other accused except the present petitioners i.e. accused nos.5 and 6 and it is hereby directed

that the said complaint shall be heard and decided on its own merits expeditiously and in any case within six months from the date of receipt of writ from this Court.

Writ to go forthwith to the trial Court.

(B.H.Marlapalle, J)